

Lithuania's Response to COVID-19: Quarantine Through the Prism of Human Rights and the Rule of Law

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1. Introduction

Like elsewhere, the COVID-19 pandemic has disrupted public life and state affairs in Lithuania. The outbreak constitutes an unprecedented challenge in the history of independent Lithuania, which in its 1992 Constitution embedded a broad list of human rights and freedoms. Even before the first case of the disease had been registered, on 26 February 2020, the Lithuanian Government [declared](#) the state of 'extreme situation' upon a proposal from the Commission on Extreme Situations. On 27 February, the Prime Minister [appointed](#) the Minister of Health to the position of State-Level Chief Operating Officer for Extreme Situations ('the Chief Officer'). Once COVID-19 cases started to emerge, on 14 March the Government adopted Resolution No 207 introducing quarantine in the territory of Lithuania ('the [Quarantine Resolution](#)'), which placed restrictions on various constitutional rights. In the words of the [Prime Minister](#): 'The decisions taken are not simple and require drastic, important measures, which are necessary to control the spread of the virus.' The Quarantine Resolution is a secondary legislation issued on the basis of the [Law on Civil Protection](#) and the [Law on the Prevention and Control of Contagious Diseases](#). The initial duration of quarantine was set for 16-30 March, but it has been extended until [31 May](#).

2. Pre-existing emergency powers

Under Lithuanian law, different legal regimes might be applied to emergency situations: state of emergency ('*nepaprastoji padėtis*', Article 2.1. of the [Law on State of Emergency](#) and Articles 144, 145, 147, 67(20) and 84(17) of the [Constitution](#)), extreme situation ('*ekstremalioji situacija*', Article 2.6. of the Law on Civil Protection) and quarantine ('*karantinas*', Articles 2.21, 21.1 and 21.3 of the Law of Contagious Diseases). The Quarantine Resolution introduced a mixed legal regime, by combining extreme situation and quarantine.

According to the Constitution, a state of emergency can only be introduced by the Parliament (the *Seimas*) when the constitutional order or social peace are under threat. If the *Seimas* happens not to be in session, the President can also make the decision, which the *Seimas* can reject. The question whether COVID-19 circumstances may have required a declaration of a state of emergency instead of quarantine has been [discussed](#) by various legal experts. The opposition leader [sought the opinion from the Seimas' Legal Department](#) arguing that the Government

had possibly acted *ultra vires*. The Head of the Department [responded](#) that the chosen legal basis was the appropriate one. However, given that Lithuania follows the model of [parliamentary democracy](#), greater parliamentary scrutiny on the matter would have been welcome. The question of which legal regime should apply is not just a theoretical one, but could have implications for future litigation against the State arising from the restrictions imposed ([Article 6.127.3 of the Civil Code](#)).

3. New powers in the context of COVID-19

Regarding the institutional setup, besides the Government, the emergency powers are also exercised by [the Chief Officer](#), who decides upon quarantine measures. The Resolution allocates duties and competences – for COVID-19 population data reporting and distribution of personal protection equipment – to municipalities, public health bodies, and other relevant state authorities (Articles 4.2, 4.3). One example of combined action of the Quarantine Resolution and the Chief Officer's Decision was [sealing off](#) the town of Nemenčinė, near Vilnius, due to the dangerous spread of COVID-19. While the Resolution specified the length of the lockdown (16-23 April) and how free movement should be limited, the Chief Officer's Decision focused on testing the population and compulsory isolation or hospitalisation for those who refuse to undergo testing in accordance with the Law on Contagious Diseases.

To ensure the enforcement of quarantine rules, the police were given powers to impose administrative fines for violations of [mandatory isolation](#) of certain defined persons and other social distancing requirements. On 31 March, the [Code of Administrative Offences was amended](#) accordingly, imposing fines from 500 to 1,500 Euros for individuals (for the first violation the fine can be reduced to 250 Euros) and from 1,500 to 6,000 Euros for those in charge of legal persons, and for smaller fines for breaches of municipal decisions.

It is important to note that during the quarantine period the [activities of courts were restricted](#). Although some work was organised remotely (e.g. preparing for proceedings by written procedure and taking procedural decisions), most public oral hearings were postponed, except in certain urgent cases (e.g. detention matters, or removing a child from an unsafe environment) or when the judge was open to holding a virtual hearing. The COVID-19 situation might also impact the functioning of the [Constitutional Court](#), where three out of nine judges finished their term on 19 March, but the *Seimas* delayed the vote on the candidates until the end of April, then rejecting all of them.

4. Separation of powers and the rule of law

As mentioned, all legal updates on quarantine conditions are executed by amending the Quarantine Resolution, with the latest amendments passed on 29 April. However, the manner in which the Resolution was introduced was problematic in terms of the rule of law and separation of powers. Given that the Resolution is a secondary legislation, it should have been adopted on express provisions in the primary legislation. However, the Government acted in a manner of urgency,

adopting the quarantine measures that were not prescribed by the Law on Contagious Diseases. Therefore, the *Seimas* had to [amend the Law retroactively on 31 March](#), giving legitimacy to the Quarantine Resolution adopted on 14 March. These amendments also allowed for the Resolution to be revised by the Government in the future, in effect passing down emergency powers in law from the legislator to the executive. Using such powers and by relying on Article 21 of the Law on Contagious Diseases, during the Easter weekend the Government introduced the limitation on internal movement, enforced by the police.

Regarding the institutional set-up, the activities of the Government and the Minister of Health are the most visible of all institutions in Lithuania. The activities of the *Seimas* have been [limited](#): it holds only one weekly ordinary sitting and urgent hearings to discuss the Government's draft legislation related to COVID-19. Such urgent law-making does not always allow for meaningful parliamentary scrutiny, sometimes resulting in approval of almost all proposals submitted by the Government, as for example, a bill on price regulation that was [vetoed by the President](#). Thus it appears that the *Seimas* is not functioning as effectively as it should, raising concerns about the imbalance in the separation of powers required by the Constitution. Nevertheless, although the MPs do not meet as often *in corpore*, the parliamentary committees, especially those scrutinising the activities of the Government during the pandemic, such as the [Committee on Legal Affairs](#), the [Human Rights Committee](#), the [Committee on National Defence and Security](#) or the [Committee on Health Matters](#), continue to function, but it is not clear to what extent they have focused on assessing the quarantine measures. Additionally, it is not evident what parliamentary or other scrutiny is taking place to provide for checks-and-balances of the decisions made by the Chief Officer.

As mentioned earlier, the amendments to the Code of Administrative Offences were introduced imposing fines for persons who do not observe quarantine. The Government [assured](#) the public that these powers will be used as the last resort, with the priority for the police first to warn those acting against the law. However, some media reports indicate that this was not necessarily the case. Since acquiring the right to draw up administrative misdemeanor protocols for violations of quarantine rules, the police have fined more than 1,300 people, with one-sixth (231) fined during the Easter weekend. These include a [medic being fined 250 euros](#) for not wearing a face mask in Nemenčinė and a woman on the way to work who [removed her mask temporarily](#) due to windy weather in the absence of other people around. If such reports are correct, they are indications of a rather formalistic approach to police powers that do not follow the 'advise first, penalise later' stance of the Government and might be questionable from the rule of law perspective.

There is also criminal liability prescribed in [Article 277 of the Criminal Code](#) for natural and legal persons who breach their duties on disease control, leading to spread of disease, a start of a pandemic, or risk for another person to get infected. The penalties under this Article include a fine, detention, or imprisonment of up to three years. It is worth mentioning that in March the Government [proposed](#) stricter criminal penalties, approved by *Seimas* and currently pending the President's approval. The provision was applied to open investigations into the activities of a

private [social care home](#), a [hospital in Klaipėda city](#) and against [individuals who left the hospital](#) in spite of suspected COVID-19.

5. Human rights

The introduction of quarantine has negatively impacted the enjoyment of various human rights in Lithuania. Whereas a state of emergency permits the *Seimas* or the President to impose extensive temporary restrictions on such rights as the right to privacy, the right to home or the freedom of expression (on the basis of strict necessity and in line with Lithuania's international obligations) (Article 145 of the Constitution), quarantine requires that the limitations are provided by law, comply with principles of necessity and proportionality, and pursue a legitimate aim, which varies depending on the right in question.

Some examples of the restrictions introduced under the Quarantine Resolution include the prohibition of public events and gatherings of more than two people who are not members of the same family (Article 3.2.3); a ban for Lithuanian nationals to leave the country, unless they permanently reside abroad, travel for work or are essential workers whose job requires foreign travel (Article 3.1.4); a ban for foreign nationals to arrive to Lithuania, unless they legally reside in the country, are immediate family members of Lithuanian nationals, essential workers or have consular protection (Article 3.1.1); all planned surgeries postponed (Article 3.4.2.2); prohibition to operate restaurants, cafés, bars, nightclubs and other places of entertainment, except where food can be taken away or delivered (Article 3.2.6); mandatory use of protective equipment on the face (Article 3.1.10.3) etc.

The extensive list of restrictions introduced by secondary legislation raises questions about their lawfulness given that the Constitution requires that such restrictions are prescribed by law. For example, according to the Law on Civil Protection (Article 8), during an emergency situation, only the freedom of movement, the inviolability of property, and right to housing can be temporarily restricted. Moreover, the Quarantine Resolution appears to set out a much wider scope of rights limitations during quarantine than is allowed under Article 21(1) of the Law on Contagious Diseases. The Law prescribes the possibility to *limit* the spread of contagious diseases in relation to work, living, rest, travel, economic and other activities, product manufacturing and sale, supply of drinking water, and provision of services. However, it is doubtful whether the Government can, on the sole basis of the aforementioned provision, *prohibit* – rather than limit – certain economic activities and rights.

It is beyond the scope of this post to discuss all human rights affected during quarantine, but a couple of issues that drew a lot of public attention should be noted. The first one concerns compulsory and enforced [two-week isolation](#) of persons returning from abroad in places chosen by municipalities (e.g. hotels). Not only were such individuals not given a choice of self-isolating at home, but there were reports that some ended up waiting in crowded hotel corridors and in this manner could have been exposed to infection. A person's isolation raises questions regarding both the freedom of movement and the deprivation of liberty. Even though the latter

is permissible on the basis of 'lawful detention of persons for the prevention of the spreading of infectious disease' (Article 5(1)(e) ECHR), it should only be used as the last resort and if the aim cannot be achieved with a less severe measure. Following strong criticism, however, the decision was [amended](#), creating the possibility to self-isolate at home or elsewhere.

Another issue concerns the access to abortion, which is legal during the first 12 weeks of pregnancy. On 15 April, the Minister of Health [noted](#) that quarantine might serve as an incentive for women seeking an abortion to consult a psychologist and perhaps reconsider the decision altogether. His comment came after information emerged about the difficulties faced by some women in accessing abortion services (some healthcare providers decided to suspend abortion services during quarantine or cancelled planned procedures due to other more urgent COVID-19 related health issues). According to some sources, desperate women ended up asking for advice on the internet, where they were recommended drugs that could be dangerous to a woman's health and life. A [petition](#) by civil society demanding access to safe abortion during quarantine received more than 10,000 signatures. A failure of the State to ensure safe abortion, which is legal under domestic law, is likely to be in breach of its positive obligations under international human rights law. The vulnerable situation of women during quarantine, including the problem of domestic violence that is [widespread](#) in Lithuania, to our knowledge, has not received much attention from the Government or the *Seimas*.

Other rights that attracted [little debate](#), but are nevertheless important, are the freedom of assembly, data protection, the right to education, and the right to engage in business or commercial activities. For example, it is doubtful whether all schools are able to organise effective online teaching, when the resources to provide necessary technological equipment and internet connection to children from socially disadvantaged backgrounds may not stretch to this extent, especially in rural areas. While a free emotional support helpline was [publicised](#) by the Government, it is unclear what mental health support measures are planned after quarantine. Although the right to engage in business or commercial activities was originally more severely restricted, many shops, beauty salons, and shopping malls have now been allowed to reopen, albeit with conditions for social distancing and hygiene still in place. There are also remaining restrictions on the freedom of assembly and expression, in effect limiting any organised protests. Concerns also have been expressed regarding personal data protection, in response to the [proposed law](#) to investigate possible non-compliance with self-isolation by monitoring personal telecommunications.

Similarly to the economic crisis of 2008, there is a risk that socio-economic rights will be particularly affected, which is extremely problematic given [high social exclusion](#), [poverty](#) and digital divide in Lithuania. As people's future income is likely to reduce, this might have serious implications for socio-economic rights in the long run, especially regarding the rights to work, education, healthcare (including mental health) and welfare support. Some legislation addressing these issues has been [adopted](#), but time will show whether it will be sufficient to mitigate the financial impact to be felt by the most vulnerable groups – the elderly, the unemployed, the disabled, single parents or persons with low income.

Article 30 of the Constitution and Article 38(1) of the Law on Contagious Diseases provide the right to appeal to court when human rights are violated. Moreover, members of the *Seimas*, the courts, the President and individuals have the right to petition the Constitutional Court regarding the conformity of the acts of the Government with the Constitution and laws (Article 106). Therefore, it is important that the disruption of the functioning of the judicial system described earlier does not impede timely access to justice.

Finally, unlike its neighbours Latvia and Estonia, Lithuania did not derogate either from the ECHR or the ICCPR. The chosen approach might have depended on the fact that a formal state of emergency has not been declared, that the 1992 Constitution is drafted after the ECHR, and that under constitutional law, health is considered to be one of the most important values and constitutes a legitimate aim for limiting several rights (e.g. freedom of movement).

6. Final remarks

Given that the measures taken, alongside a high rate of [testing](#), appeared [to slow down](#) the spread of COVID-19, the Government started to implement a four-stage 'quarantine exit plan', which foresees various businesses slowly opening up albeit with certain restrictions. However, the necessity and effectiveness of concrete quarantine measures should be reassessed regularly, and should focus on both voluntary civic compliance and legal enforcement. Thus, it seems that so far the emergency powers have been used proportionately and in a time-limited manner, albeit some concerns regarding human rights and the rule of law, outlined above, remain. While it is understandable that the pandemic required a quick response, more attention from the Lithuanian decision-makers on fundamental rights and the required balancing would have been welcome.

